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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,280	10/14/2003	Wolfgang Hirschburger	0212.66894	4919

7590 06/23/2009
GREER, BURNS & CRAIN, LTD.
Suite 2500
300 South Wacker Drive
Chicago, IL 60606

EXAMINER

PAUL, DISLER

ART UNIT	PAPER NUMBER
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2614

MAIL DATE	DELIVERY MODE
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06/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: WOLFGANG HIRSCHBURGER, RANDALL COE
and STEVE COLE

Application No. 10/685,280
Technology Center 2600

Mailed: June 22, 2009

Before Deborah L. PERRY, *Supervisory Paralegal Specialist, Review Team*
PERRY, *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Examiner's Answer mailed December 24, 2008, under the heading "Grounds of rejection" is not consistent with the grounds of rejection of claims set forth in the last Office Action of record. The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified and any new grounds of rejection must be provided under a separate heading "New Grounds of Rejection" in the Examiner's Answer and must include the approval of the TC Director or his/her designee. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 and 1207.03 (8th ed. Rev. 6, Sept 2007) for details.

Specifically, the Examiner's Answer is **silent** to the rejection of **Claims 9-11 and 19-21** as being rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (2002/0158604) and Bhagwat (4,835,409) and further in view of Kelly (4,845,409). Whereas these claims were included in the Final Rejection mailed March 24, 2008, which stated that Claims 7-11 and 17-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (2002/0158604) and Bhagwat (4,835,409) and further in view of Kelly (4,845,409).

Clarification of the rejection of these claims in relationship to the cited references is required.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to **vacate** the Examiner's Answer mailed December 24, 2008;
- 2) to issue a Substitute Examiner's Answer clarifying the rejection of Claims 9-11 and 19-21 under 35 U.S.C. 103(a) (as identified above);
- 3) if appropriate, to include the approval of the TC Director or his/her designee (as may be required for any new grounds of rejection); and
- 4) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/klh

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